IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 22ND MARCH 2007 / 1ST CHAITHRA 1929

WP(C).No. 9802 of 2007(P)

AGAINST THE ORDER IN EP.412/2005 IN
OS.327/1998 of PRL.SUB COURT,THRISSUR

.....

PETITIONER:

ROY, S/O.KONIKKARA JOHN,
NEAR PUTHANPALLY, ERINJERI ANGADI, CHEMBOOKAVU
VILLAGE, THRISSUR TALUK.

BY ADV. SRI.DINESH R.SHENOY

RESPONDENTS:

1. PAULSON, S/O.CHEMMUNDA SAIMON, HIGH ROAD
   THRISSUR VILLAGE, DESOM, THRISSUR TALUK (DIED).

2. FRANCIS, S/O.CHEMMUNDA SAIMON,
   SUBHASH NAGAR, CHIYYARAM VILLAGE & DESOM,
   THRISSUR TALUK.

3. LISSY, W/O.LATE CHEMMUNDA PAULSON,
   CHEMMUNDA HOUSE, NAVAJYOTHI NAGAR,
   NELLIKUNNEL MURIYIL, OLLUKKARA VILLAGE,
   THRISSUR TALUK.

4. MERVIN, -DO- -DO- NOW WORKING AT
   ALUKKAS JEWELLERY, PALAYAM ROAD, KOZHIKODE.

5. JEEVAN (MINOR), AGED 12 YEARS,
   S/O.LATE PAULSON, CHEMMUNDA HOUSE,
   NAVAJYOTHI NAGAR, NELLIKKUNNEL MURIYIL,
   OLLUKKARA VILLAGE, THRISSUR TALUK, MINOR REP.BY
   GUARDIAN, MOTHER LISSY.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.P. BALACHANDRAN, J.

W.P. (C) No. 9802 of 2007

Dated this the 22nd day of March, 2007

JUDGMENT

Petitioner is the decree holder in O.S. No.327/1998 on the file of the Principal Sub Court, Thrissur. His grievance is that though E.P.No. 412/2005 was filed as early as on 22.8.2005 and judgment debtors are all ex-parte in the execution petition, the court below is not executing the decree.

2. It is seen that though the E.P. was filed on 22.8.2005 and Rule 66 notice was issued to the respondents, later it was noticed that property was attached showing a different survey number. Hence fresh attachment was ordered. Consequently, Rule 66 notice again was ordered and was taken out to the judgment debtors. On 15.2.2007, as seen from copy of the order sheet produced as Ext.P9,

judgment debtors 3 and 5 entered appearance and the case was adjourned to 28.3.2007 for counter. The counsel for the petitioner submits that though such submission was made on 15.2.2007, in fact, the judgment debtors 3 and 5 had not entered appearance and no vakalath was filed and that therefore he moved an application for advancing the case and after advancing the case to 7.3.2007 the court has adjourned the case again to 28.3.2007 for counter of the respondents.

3. It is worthy to note that on the submission made on 15.2.2007, the court could not but post the case for counter of judgment debtors 3 and 5 to 28.3.2007. After posting the case for counter to 28.3.2007 the execution court could not have advanced the case as judgment debtors 3 and 5 either in person or through the counsel may file objection on 28.3.2007.

4. Hence, I do not find any defect in the procedure adopted so as to find fault with the

court below as having caused any delay in the execution of the decree. However, in the circumstances pointed out, it is seen that on 28.3.2007 the opportunity given to judgment debtors 3 and 5 to file counter also will be over.

4. In the result, I direct the execution court to expedite the execution proceedings and to dispose of E.P.No.412/2005 as expeditiously as possible.

This writ petition is disposed of with the above directions.

(K.P.Balachandran, Judge)

ma